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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,072	01/19/2000	RONNY KNEPPLE	3143-P0082A	6808

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EXAMINER
LEE, DIANE I

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/403,072	Applicant(s) KNEPPLE ET AL.	
	Examiner D. I. Lee	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 July 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,5-11 and 13-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,5-11 and 13-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 18 July 2003. Claims 5-10 and 13-14 have been amended; no claims have been canceled; and claim 15 has been newly added. Currently, claims 2, 5-11, and 13-15 are pending in this application.

Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated (i.e., the applicant admitted in the specification page 6, line 15 that Fig. 1 is known identification method for sample container). See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 10 and its depend claims 5-6, 9, 11, and 13 are remain rejected under 35 U.S.C. 102(b) as being anticipated by Ono [JP 05-000,821 A].

Re claims 5, 10-11, and 13: Ono discloses a method for labeling sample containers (bottle 1), comprising the steps of:

providing a container for holding a sample to be analyzed and wherein the analysis includes a container and/or sample identification by an analysis device (i.e., reading device 11 for an identification and classification). Therefore, the sample container operating temperature (e.g., an identification

operation) would be a surrounding temperature, such as a room temperature or an ambient temperature; and

applying an identification marker (bar code 6) to the surface of the container at the elevated temperature above a sample analysis temperature, which is greater than the ambient temperature (i.e., in the manufacturing process of the sample container, the bottle material is blown to form a bottle 1. The bottle is blown during the "hot end" of the bottle manufacturing process and wherein the temperature range of the hot end would be at a maximum). During the final cooling phase of the ready sample container, a heating element is used to mold the glass bottle to provide a bar code 6 as an identification marking into the surface of the bottle, i.e., the heater 2, 3, is utilized to form an identification bar code 6 on the container. This process clearly teaches that the temperature of the container at the time of applying the bar code to the container is at the elevated temperature above the sample analysis temperature (i.e., applying the bar code at least higher than the ambient temperature). Since a maximum temperature would be provided at the hot end of the bottle manufacturing process, the identification marking is formed in a temperature interval between a maximum temperature and a temperature that is above the operating or the ambient temperature (see the abstract). Therefore, Ono clearly teaches the process of elevating a temperature of the container above a sample analysis temperature and applying an identification marker (bar code 6) to the surface of the container at the elevated temperature above a sample analysis temperature, which is greater than the ambient temperature or room temperature.

Re claims 6 and 9: wherein the identification is applied in the form of a symbol such as a bar code applied annually onto a cylindrical portion of the sample container such that the bar code 6 is readable along the cylindrical axis of the sample container (see the abstract and figures 3-6).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2, 7-8, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono. The teachings of Ono have been discussed above.

Re claim 2: Although Ono teaches the temperature of the heater is adjusted by a temperature controller 5, Ono is silent with respect to specifically controlling the temperature interval, i.e., between 300°C and 600°C.

However, it would have been an obvious variation to an artisan of ordinary skill in the art at the time the invention was made to vary the temperature in order to provide specific desire strength of the container. Varying temperature of the bottle material would alter the strength characteristic and the formation of the bottle. Accordingly, it would have been an obvious extension taught by Ono.

Re claim 7: Ono does not disclose the identification marker is applied along with numerals or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the numerals or letters in the optical identification process of Ono to expand the identification labeling technique. Furthermore, applying the identification with numerals or letters in an optical reading process (incorporating optical character reading in the bar code reading) would have been an obvious extension taught by Ono for the purpose of providing additional information. Accordingly, it would have been an obvious expedient.

Re claim 8: Ono does not disclose the identification is applied in form of numerals or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to substitute the bar code reading process of Ono with an optical reading process by providing the identification code in form of numerals or letters in order to eliminate the computing process in the decoder. Accordingly, it would have been an obvious expedient.

Re claim 14: Although Ono teaches the elevated temperature is greater than ambient temperature, he does not specify that it is above a degassing temperature.

Since, the temperature of the heater 2, 3, which utilized to form an identification on the container, is suitably adjusted with a regulator, it is would have been obvious to an artisan of ordinary skill in the art the time the invention was made to employ the temperature above the degassing temperature in order to prevent any gas evacuated from the container and to prevent any gas exposed in the operating room during annealing process. Such modification would create safe and gas-fee operating environment.

Re claim 15: Although Ono does not disclose the identification marker is applied to the container by ink jet printing, applying the identification marker by ink jet printing is notoriously old and well known identification printing technique for visual and/or automatic recognition of identification data, therefore, it would have been an obvious to an artisan of ordinary skill in the art to modify the teachings of Ono to provide different labeling technique for an identification (i.e., providing an identification information visibly or automatically).

Response to Arguments

8. Applicant's arguments filed 18 July 2003 have been fully considered but they are not persuasive.

9. Applicant's argues that Ono relies upon manipulating a material property of the glass bottle (i.e., the refractive index) to produce an identifying bar code, ... by changing the rate at which the glass is cooled during the manufacturing process, in contrast, claim 10 requires applying a marker to the surface of a bottle to act as an identifying bar code, and thus, claim 10, as amended, is not anticipated by Ono (see page 8, lines 9+). The examiner respectfully disagrees. Ono teaches the process of producing an identification marker to a surface of the container by manipulating a material property of the glass bottle (i.e., the refractive index). The fact that claim 10 recites applying an identification marker to the surface of the container, therefore, Ono clearly anticipates the claimed limitations.

10. Applicant further argues that Ono relies an additional step of shining light on the resultant bottle through a polarizing filer in order to identify the bottle, whereas claims 10 and 14 requires applying an identification marker to a surface of a container at an elevated temperature to identify the container, and further there is no requirement in claims 10 and 14 that there be any change in elevated temperature nor is there a need to shine polarized light of the bottle in order to identify the bottle. The examiner respectfully points out that Ono clearly teaches the claimed steps, e.g., applying an identification marker (bar code 6) to the surface of the container at the elevated temperature above a sample analysis temperature, which is greater than the ambient temperature (i.e., in the manufacturing process of the sample container, the bottle material is blown to form a bottle 1. The bottle is blown during the "hot end" of the bottle manufacturing process and wherein the temperature range of the hot end would be at a maximum). During the final cooling phase of the ready sample container, a heating element is used to mold the glass bottle to provide a bar code 6 as an identification marking into the surface of the bottle, i.e., the heater 2, 3, is utilized to form an identification bar code 6 on the container. This process clearly teaches that the temperature of the container at the time of applying the bar code to the container is at the elevated temperature above the

sample analysis temperature (i.e., applying the bar code at least higher than the ambient temperature). Since a maximum temperature would be provided at the hot end of the bottle manufacturing process, the identification marking is formed in a temperature interval between a maximum temperature and a temperature that is above the operating or the ambient temperature (see the abstract). Therefore, Ono clearly teaches the process of elevating a temperature of the container above a sample analysis temperature and applying an identification marker (bar code 6) to the surface of the container at the elevated temperature above a sample analysis temperature, which is greater than the ambient temperature or room temperature. Furthermore, it is noted that specific method of reading or identifying the marker, i.e., identifying the bottle with need to shine polarized light of the bottle is not recited in the claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is 703-306-3427. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

D. I. Lee
Primary Examiner
Art Unit 2876

July 8, 2002